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No. 95-

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

RAY A. LEWIS

Petitioner,

-v.-

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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No. 95-

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UNITED STATES OF AMERICA,

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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

QUESTION PRESENTED

Whether the Court of Appeals erred in concluding that, although Mr. Lewis was charged with two offenses that exposed him to a total of 12 months' imprisonment, he was not entitled to a jury trial, a holding contrary to that of every one of the seven other federal courts that have considered this question.

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Petitioner Ray A. Lewis respectfully requests that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit that affirmed the judgment of conviction of the United States District Court for the Eastern District of New York entered February 25, 1994, convicting petitioner of two counts of obstructing the mail, in violation of 18 U.S.C. § 1701, and sentencing him to three years' probation.

OPINION BELOW

The Court of Appeals rendered an opinion affirming petitioner's conviction, which is annexed as Appendix A. United States v. Lewis, ___F.3d___, Docket No. 94-1701 (2d Cir. September 5, 1995).

JURISDICTION

The judgment of the Court of Appeals was entered on September 5, 1995. A 1. No application has been filed for an extension of time within which to file this petition. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, amend. VI.

STATEMENT OF THE CASE

Introduction

Mr. Lewis, a postal worker, was charged with two counts of obstructing the mail, in violation of 18 U.S.C. § 1701. Since each count carried a maximum sentence of six months' imprisonment, Mr. Lewis faced a total possible punishment of 12 months in jail. He thus sought a jury trial, on the ground that the aggregate penalty exposure rendered the charges against him "serious." Every federal court to decide this issue had concluded that the aggregate penalty a defendant faces determines his jury trial right. Nevertheless, the magistrate judge denied the request for a jury. This ruling was affirmed by the United States District Court for the Eastern District of New York, and by the United States Court of Appeals for the Second Circuit.

The Jury Trial Ruling, Verdict and Sentence

After hearing extensive argument on whether Mr. Lewis was entitled to a jury trial, Magistrate Judge Joan Azrack stated that she was "not going to sentence Mr. Lewis to more than six months in prison under any circumstances," and granted the government's motion for a bench trial. After a one-day trial, she convicted Mr. Lewis of both counts of obstruction of the mail and sentenced him to three years' probation.

The District Court Appeal

Mr. Lewis appealed the denial of a jury trial to Judge Carol B. Amon of the United States District Court for the Eastern Dis-

trict of New York. The district court acknowledged that every federal court to consider the question had concluded that the aggregate penalty a defendant faces determines his jury trial right. Nevertheless, relying exclusively on the dissenting opinion in United States v. Coppins, 953 F.2d 86 (4th Cir. 1991), the district court concluded that those cases were incorrectly decided and that a defendant is entitled to a jury trial only if he faces a maximum sentence greater than six months for any single offense that is charged.

The Court of Appeals Decision

On September 5, 1995, the United States Court of Appeals for the Second Circuit affirmed. The court recognized that the question has not yet been resolved by this Court. It also acknowledged the unanimity of the numerous federal court decisions concluding that the aggregate penalty a defendant faced determined whether he is entitled to a jury trial. Slip op. at 6797. Nevertheless, the court rejected the reasoning of the other federal courts. It held that, since under 18 U.S.C. § 3584(a) multiple terms of imprisonment imposed simultaneously are presumptively concurrent, "multiple offenses prosecuted jointly are no more serious in their aggregate than the most serious single offense of conviction." Slip op. at 6798. The court also held that Mr. Lewis was not entitled to a jury trial since "the question of [his] right to a jury trial could have been obviated altogether" had the government chosen to sever the two counts

and prosecute them separately. Slip op. at 6798-99.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS' DECISION THAT MR. LEWIS WAS NOT ENTITLED TO A JURY TRIAL IS IN CONFLICT WITH THIS COURT'S WELL ESTABLISHED JURY TRIAL JURISPRUDENCE, AS WELL AS WITH THE HOLDINGS OF THREE OTHER CIRCUITS AND FOUR DISTRICT COURTS.

This Court's Sixth Amendment jurisprudence has created a "bright-line" rule that a criminal defendant who faces more than 6 months' imprisonment in a single proceeding is entitled to a jury trial. Codispoti v. Pennsylvania, 418 U.S. 506 (1974); Baldwin v. New York, 399 U.S. 66 (1970). Although the Court has not specifically ruled on the question whether a defendant who is tried on multiple petty offenses in a single prosecution is entitled to a jury trial if his aggregate penalty exposure exceeds 6 months' imprisonment, every federal court to consider the question has concluded that such a defendant is entitled to a jury trial. The Second Circuit's contrary ruling has created a split among the circuits on this important constitutional question, and threatens to erode the "bright-line" rule established by this Court's precedents. Certiorari should accordingly be granted.

A. There Is a Split Among the Circuits on the Question Whether a Defendant Charged with Multiple Petty Offenses, but Facing More than a Six Month's Imprisonment if Convicted, Is Entitled to a Jury Trial.

The Sixth Amendment jury trial right extends only to defendants charged with "serious" crimes; those facing "petty" charges

may be tried without a jury. Duncan v. Louisiana, 391 U.S. 145, 159 (1968). In Baldwin, 399 U.S. at 68-69, this Court defined "serious" offenses as those for which the authorized statutory penalty is more than six months' imprisonment. Although Duncan, Baldwin and their progeny have left open the question presented by this case -- whether a defendant charged with multiple "petty" crimes, but facing "serious" criminal sanctions, is constitutionally entitled to a jury trial -- a consistent application of the principles established in those cases, particularly Codispoti, 418 U.S. at 506, leads to the conclusion that such a defendant must be tried by jury.

With the exception of the Second Circuit, every federal court in which the issue has been litigated has concluded that a defendant facing an aggregate total of more than 6 months' imprisonment is entitled to a jury trial. See United States v. Coppins, 953 F.2d 86, 90 (4th Cir. 1991); United States v. Bencheck, 926 F.2d 1512 (10th Cir. 1991); Rife v. Godbehere, 814 F.2d 563 (9th Cir. 1987); United States v. Musgrave, 695 F.Supp 231, 233 (W.D.Va 1988); United States v. O'Connor, 660 F.Supp 955 (N.D.Ga 1988); United States v. Coleman, 664 F.Supp 548 (D.D.C. 1985); United States v. FMC Corp. 428 F.Supp 615 (W.D.N.Y. 1977), aff'd on other grounds, 572 F.2d 902 (2d Cir. 1978). Moreover, since 1974, when Codispoti was decided, every state court to consider the question has also concluded that the aggregate penalty a defendant faces triggers the Sixth Amendment right to a

jury trial.[1] See State v. Bell, 899 P.2d 1000 (Kan. 1995)(aggregation required in some circumstances); State v. Jones, 396 So.2d 1272, 1274 (La. 1981); State v. Hamm, 577 A.2d 1259, 1261 (N.J. 1990), cert. denied, 499 U.S. 947 (1991); State v. Sanchez, 786 P.2d 42 (N.M. 1990)[2].

The Second Circuit has rejected this unanimous body of precedent, concluding that the "mere possibility of consecutive sentences exceeding six months' imprisonment is insufficient to trigger a defendant's right to a jury trial." Slip op. at 6798. The Second Circuit has thus created a split among the circuits on this important constitutional question; certiorari should be granted to resolve this conflict.

B. The Second Circuit Incorrectly Applied Baldwin and Codispoti in this Case.

Certiorari should also be granted because the Second Circuit's resolution of this issue is incorrect. Only aggregating the potential penalties a defendant faces is consistent with Baldwin's mandate that a jury trial is required "when what is at

---

[1] In some states the question is not relevant, since either the state constitution or a statute provides the defendant with a more expansive jury trial right than that guaranteed by the Sixth Amendment.

[2] In New York, there is no appellate authority on the question. The most recent lower court decision held that aggregating the total penalties the defendant faces is required. See, e.g., People v. Estevez, 622 N.Y.S.2d 870 (Crim. Ct. Kings Co. 1995).

stake is the deprivation of individual liberty for a period exceeding six months." 399 U.S. at 72. Since Baldwin sets the line between serious and petty prosecutions "on the basis of the possible penalty alone" (Id. at 72-73, emphasis added), the Second Circuit was incorrect in holding that the possible 12-month penalty Mr. Lewis faced did not trigger a jury trial.

Codispoti, 418 U.S. at 516-517, strongly suggests that the jury trial right is based on the aggregate penalty a defendant faces at a single trial, and not, as the Second Circuit believes, on the authorized maximum sentence of the most serious single count. In Codispoti, two contemnors were convicted of several petty contempts in a single, non-jury proceeding, but were sentenced to consecutive terms of imprisonment well in excess of six months. This Court reversed their convictions, holding that "each contemnor was tried for what was equivalent to a serious offense and was entitled to a jury trial." The Second Circuit refused to apply the reasoning of Codispoti to non-contempt cases, although it recognized that the Fourth Circuit has. Slip op. at 6800; see Coppins, 953 F.2d at 90.

> Because courts cannot look to Congress's estimation of seriousness in the contempt context, the fact that the Supreme Court mandated aggregation of multiple contempt penalties to determine the sentence actually imposed has no bearing on the issue at hand. While Codispoti controls in those circumstances in which no maximum penalty is provided by law, it does not affect the analysis when Congress has provided a specific measure of the seriousness of a particular crime.

Slip op. at 6800. The distinction drawn by the Second Circuit between contempt offenses and non-contempt offenses is untenable. For Sixth Amendment purposes, the difference in the manner by which the maximum authorized penalty is determined does not change the consequence of a maximum authorized penalty of more than six months' imprisonment. "[I]n terms of those considerations which make the right to jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes." Codispoti, 418 U.S. at 516, citations and internal quotation marks omitted. See also, Blanton v. City of North Las Vegas, 489 U.S. 538, 543 n.7 (1989)(non-contempt case relying, in part, on Codispoti).

Nor is the Second Circuit's alternative reasoning persuasive. The court first incorrectly concluded that 18 U.S.C. § 3584(a) evinces Congress's judgment that the commission of two separate offenses is not more serious than the commission of a single offense, because under this statute multiple sentences imposed at the same time are presumptively concurrent. To the contrary, that Congress considers the commission of several crimes to be more serious than the commission of a single crime is demonstrated by the fact that consecutive sentences are authorized by § 3584(a). Only if § 3584(a) forbade consecutive sentences would the Second Circuit's reading of the statute be justified.

The court also held that since the government could have

avoided a jury trial by severing the counts, there was no right to a jury trial in a prosecution where the counts were joined. Slip op. at 6798-99. But whether the government can circumvent the jury trial right is irrelevant to whether that right actually exists. If the Second Circuit's analysis is correct, then it is also true that the defendant can be denied a jury trial in any case, even one involving serious felony charges; all the government need do is assert that it could have reduced the charges to petty misdemeanors, for which a jury trial would not be required, but elected not to.

C. There Is also A Circuit Split on the Question Whether a Trial Court's Pre-Trial Sentence Promise Can Deprive the Defendant of a Jury Trial.

Before trial, the magistrate promised that she would not sentence Mr. Lewis to more than six months' imprisonment. The Second Circuit, in dicta, concluded that such a pre-trial promise could not serve as the basis for denying a jury trial. "[S]elf-imposed limitations on sentencing by the court cannot deprive a defendant of his constitutionally protected right to a jury trial." Slip op. at 6800-01. However, the Tenth Circuit has reached the opposite conclusion. Bencheck, 926 F.2d at 1519. Granting certiorari would allow the Court to resolve this circuit split as well.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: New York, New York
October 19, 1995

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1698—August Term, 1994
(Argued: June 20, 1995 Decided: September 5, 1995)
Docket No. 94-1701

UNITED STATES OF AMERICA,

Appellee.

—v.—

RAY A. LEWIS,

Defendant-Appellant.

Before:

KEARSE, ALTIMARI and PARKER,
Circuit Judges.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Amon, *J.*), convicting defendant-appellant Ray Lewis, following a

bench trial, of two counts of obstructing the mails, in violation of 18 U.S.C. § 1701.

Affirmed.

STEVEN M. STATSINGER, The Legal Aid Society Federal Defender Division Appeals Bureau, New York, New York, *for defendant-appellant*.

JAMES WALDEN, Assistant United States Attorney, Eastern District of New York, Brooklyn, New York (Zachary W. Carter, United States Attorney, Susan Corkery, Assistant United States Attorney, on the brief), *for appellee*.

ALTIMARI, *Circuit Judge*:

Defendant-appellant Ray Lewis ("Lewis") appeals from a judgment of the United States District Court for the Eastern District of New York (Amon, *J.*), convicting him, following a bench trial, of two counts of obstructing the mails. Lewis contends that he was improperly denied a jury trial in light of the fact that the maximum potential aggregate sentence for his two charges exceeded six months. The district court, however, held that, for the purpose of determining a defendant's right to a jury trial, penalties should not be aggregated. Because Congress has given no indication that multiple offenses are more serious by virtue of their multiplicity than are single offenses of the same nature, the right to

a jury trial cannot depend upon the maximum potential aggregate term of incarceration. Accordingly, we affirm the judgment of the district court.

BACKGROUND

Lewis, a postal worker, was charged with two counts of obstructing the mail in violation of 18 U.S.C. § 1701. The maximum sentence for each count was six months' imprisonment, a hundred dollar fine and a ten dollar special assessment. Prior to trial, the government moved to have Lewis tried without a jury. Magistrate Judge Azrack granted the government's motion, but stated that she would not "sentence Mr. Lewis to more than six months in prison under any circumstances . . . ." On February 25, 1994, Lewis was convicted of both counts and sentenced to three years of probation on each count to run concurrently.

Lewis appealed the denial of a jury trial to the district court, which on December 7, 1994 affirmed Magistrate Judge Azrack's determination. The district court held that the right to a jury trial was not determined by the severity of the sentences for the offenses in their aggregate, but rather by the severity of the sentences for each charge individually. Thus, according to the district court, "a defendant is entitled to a jury trial only if he faces a maximum sentence greater than six months for any single offense that is charged."

Lewis now appeals the determination of the district court.

DISCUSSION

The United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." U.S. Const. amend. VI. Despite the absolute language of the Sixth Amendment, the Supreme Court has made clear that a jury trial is required for only those offenses that are "serious" in nature; bench trials are sufficient for "petty" offenses. *See Duncan v. Louisiana*, 391 U.S. 145, 159-62 (1968).

In order to determine whether or not an offense is "serious," the Supreme Court has looked to "objective criteria." *Baldwin v. New York*, 399 U.S. 66, 68 (1970) (plurality opinion). According to the Court, the best objective indicator of the seriousness of an offense is "the severity of the maximum authorized penalty." *Id.* Implicit in the maximum penalty is Congress's view as to the seriousness of that crime. *See Blanton v. North Las Vegas*, 489 U.S. 538, 541 (1989); *Frank v. United States*, 395 U.S. 147, 148 (1969). The legislature is better equipped than is the judiciary to measure public sentiment as to the seriousness of respective offenses and is more responsive to changes in the public attitude. *See Blanton*, 489 U.S. at 541-42; *see also Landry v. Hoepfner*, 840 F.2d 1201, 1209 (5th Cir. 1988) (en banc), *cert. denied*, 489 U.S. 1083 (1989). Thus, the maximum authorized penalty for a particular offense is a strong indicator of the present sentiment as to the seriousness of that crime.

While courts are instructed to look at all potential modes of punishment for a particular offense (e.g. incarceration, probation, fines, etc.), "[p]rimary emphasis . . . must be placed on the maximum authorized period

of incarceration." *Blanton*, 489 U.S. at 542. Regardless of any other possible punishment, the Supreme Court has determined that "no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized." *Baldwin*, 399 U.S. at 69. Accordingly, any defendant facing in excess of six months incarceration for a single offense is entitled to a jury trial.

The question which remains unanswered by the Supreme Court, however, is whether an individual potentially facing over six months imprisonment for multiple petty offenses is entitled to a jury trial. Those courts which have addressed this question to date are in agreement that potential sentences must be aggregated to determine the right to a jury trial. *See United States v. Coppins*, 953 F.2d 86, 90 (4th Cir. 1991); *United States v. Bencheck*, 926 F.2d 1512, 1518 (10th Cir. 1991); *Rife v. Godbehere*, 814 F.2d 563, 565 (9th Cir. 1987); *see also United States v. Musgrave*, 695 F. Supp. 231, 233 (W.D.Va. 1988); *United States v. O'Connor*, 660 F. Supp. 955, 956 (N.D.Ga. 1987); *United States v. Coleman*, 664 F. Supp. 548, 549 (D.D.C. 1985); *United States v. FMC Corp.*, 428 F. Supp. 615, 620 (W.D.N.Y. 1977), *aff'd on other grounds*, 572 F.2d 902 (2d Cir. 1978). These courts reason, in essence, that "defendants can view as no less serious a possible penalty of [over six months] in prison when charged with [multiple] offenses . . . than if charged with one offense having a potential penalty of [greater than six months]. . . . Nor . . . should [a] court view the offenses any less seriously." *Coppins*, 953 F.2d at 90 (quoting *United States v. Potvin*, 481 F.2d 380, 382 (10th Cir. 1973)).

We reject the reasoning of these courts. When determining a defendant's rights under the Sixth Amendment,

the mere possibility of consecutive sentences exceeding six months' imprisonment is insufficient to trigger a defendant's right to a jury trial. We believe that in reaching the opposite conclusion, the courts discussed above failed to focus on the appropriate objective criteria for determining the seriousness of multiple offenses tried together. The Supreme Court has made clear that courts should look to Congress's determination as to the seriousness of a particular offense. Indeed, the Court has explicitly stated that "[t]he judiciary should not substitute its judgment as to seriousness for that of [the] legislature . . . ." *Blanton*, 489 U.S. at 541. While those courts that have previously addressed the question have focused upon the *defendant's* view as to the seriousness of facing over six months imprisonment for aggregate sentences, the appropriate inquiry is how seriously *Congress* views the offenses in the aggregate.

Congress has not indicated that multiple offenses for which a defendant is prosecuted jointly are necessarily any more serious in their aggregate than the most serious individual offense. Rather, 18 U.S.C. § 3584(a) provides that, except as mandated by court order or statute, "[m]ultiple terms of imprisonment imposed at the same time run concurrently." Thus, the presumption under § 3584(a) is that multiple offenses prosecuted jointly are no more serious in their aggregate than the most serious single offense of conviction.

Moreover, the question of Lewis's right to a jury trial could have been obviated altogether had the government chosen to simply charge both counts of obstructing the mail in separate informations. While trying Lewis's two offenses separately would have been contrary to judicial economy—an outcome we seek to avoid when possible—Lewis himself admits that under such a circumstance he would not have been entitled to a jury trial. Under § 3584, had Lewis been convicted in separate bench trials, the district court could have sentenced him to two terms of imprisonment to run consecutively, thus still exposing him to as much as a year of imprisonment. The mere fact that the government chose to consolidate the charges provides no greater justification for a jury trial than if the charges were tried separately. As Judge Niemeyer wrote in his dissenting opinion in *Coppins*, "[j]udicial efficiency imposed at no greater risk to the defendant should not change the standard for determining whether the defendant is given a jury trial." *Coppins*, 953 F.2d at 92 (Niemeyer, *J.*, dissenting). We agree.

In addressing the question of aggregate penalties, the Fourth Circuit has held that the Supreme Court's pronouncement in *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), is determinative of the issue:

> [T]here is no apparent reason why the Court's holding in *Codispoti v. Pennsylvania* that consecutive sentences of imprisonment actually imposed for a series of contempts committed during a single trial should be aggregated for this purpose should not apply also to require aggregation of any maximum sentences authorized by statute where those are determinative of the right.

Coppins, 953 F.2d at 90 (citation omitted). In *Codispoti*, however, the Supreme Court addressed the question of aggregating penalties in the context of contempt charges, which in our view does not bear directly upon the issue at hand.

"In criminal contempt prosecutions, 'where no maximum penalty is authorized, the severity of the penalty actually imposed is the best indication of the seriousness

of the particular offense.' " *Blanton*, 489 U.S. at 542 n.6 (quoting *Frank*, 395 U.S. at 149). Accordingly, the only measure of the seriousness of a particular contemnor's criminal acts is the entirety of the court's sentence—the aggregate of the penalties imposed for each contemptuous act—a matter which is strictly at the court's discretion, *see, e.g., United States v. Local 1804-1, Int'l Longshoremen's Assoc., AFL-CIO*, 44 F.3d 1091, 1095-96 (2d Cir. 1995) (describing limits of court's discretion). Because courts cannot look to Congress's estimation of seriousness in the contempt context, the fact that the Supreme Court mandated aggregation of multiple contempt penalties to determine the sentence actually imposed has no bearing on the issue at hand. While *Codispoti* controls in those circumstances in which no maximum penalty is provided by law, it does not affect the analysis when Congress has provided a specific measure of the seriousness of a particular crime—then, as now, aggregation of penalties remains an inappropriate basis upon which to determine a defendant's right to a jury trial.

Finally, the government argues that even if the court were to aggregate potential sentences, Lewis was not entitled to a jury trial because the magistrate judge assured Lewis that the trial would result in no greater sentence than six months' imprisonment. While we need not resolve this question, in light of the discussion above it is clear that the government's argument is unavailing. The measure for constitutionally required jury trials is the "seriousness" of any given offense or offenses, which is, in turn, measured principally by the maximum punishment authorized by Congress; therefore, self-imposed limitations on sentencing by the court cannot deprive a defendant of his constitutionally protected right to a jury

trial. *But see Bencheck*, 926 F.2d at 1519 ("where the trial judge announced that the sentence, in the event of conviction, would be no more than six months' incarceration . . . no jury was constitutionally required").

CONCLUSION

Because we do not believe that Congress has indicated that petty offenses are more serious in their aggregate than is each petty offense unto itself, we affirm the judgment of the district court.

Supreme Court, U.S.
FILED
OCT 20 1995
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No. 95-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

RAY A. LEWIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Petitioner, Ray A. Lewis, respectfully requests leave to proceed here in forma pauperis, without payment of fees and costs. Counsel certifies that, in the court below, counsel was appointed to represent petitioner, pursuant to the Criminal Justice Act.

Dated: New York, New York
October 19, 1995

By: _____
STEVEN M. STATSINGER
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October 19, 1995

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OCT 20 1995
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Honorable William W. Suter
Clerk
Supreme Court of the United States
1 First Street, N.E.
Supreme Court Building
Washington, D.C. 20543

Re: RAY A. LEWIS v. UNITED STATES OF AMERICA
95-

Dear Mr. Suter:

Enclosed are ten copies each of a petition for a writ of certiorari and an attached appendix on behalf of Ray A. Lewis, an application for leave to proceed in forma pauperis, a certificate of service, and a statement of filing by mail.

Three copies of the petition and appendix and one of the application for in forma pauperis relief have been served by first-class mail on the Office of the Solicitor General of the United States and one copy of each has been served on the United States Attorney, Eastern District of New York, Attention: James Walden, Assistant United States Attorney.

Very truly yours,

STEVEN M. STATSINGER
Associate Appellate Counsel

SMS/wd

Enclosures

cc: Honorable Drew S. Days, III
Solicitor General of the
United States

James Walden, Esq.
Assistant United States Attorney
Eastern District of New York